IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA MICHELLE LAMBERT	:	CIVIL ACTION
	:	
v.	:	
	:	
MRS. CHARLOTTE BLACKWELL, SUPT., et al.	:	NO. 96-6244

MEMORANDUM

Dalzell, J. February 21, 2001

An informal request for a common judicial courtesy presents us with what may well be a unique procedural and management question. To understand the significance of this simple-sounding request and the difficulty it raises, it is necessary to canvas the zigzagging procedural history of this habeas corpus litigation.

On April 21, 1997, we granted Lisa Michelle Lambert's amended petition for a writ of habeas corpus, which she had filed under 28 U.S.C. § 2254. See Lambert v. Blackwell, 962 F.Supp. 1521 (E.D.Pa. 1997). On April 16, 1997, with the Commonwealth of Pennsylvania's agreement that "relief is warranted", Ms. Lambert was released into the custody of her lawyers; our Order five days later released her, over the Commonwealth's objection, from all fetters on her liberty. The motions panel of the Court of Appeals, after review of the record before us[1], declined to stay our April 21, 1997 Order. See slip op. in No. 97-1281, -1283 and -1287 (3d Cir. May 9, 1997). A later panel on December 29, 1997 reversed, Lambert v. Blackwell, 134 F.3d 506 (3d Cir. 1997).

[1] Those proceedings had been transcribed daily.

Mentioning in a footnote that the Commonwealth of Pennsylvania could retract its agreement to Ms. Lambert's release, the panel held that there was a possibility under the Pennsylvania Post-Conviction Relief Act that would afford Ms. Lambert an avenue of relief and directed that the amended habeas petition should be denied without prejudice to its reassertion after Ms. Lambert exhausted whatever review was available to her under the state post-conviction regime.

Over the dissent of Judge Roth, which was joined in by three other Court of Appeals judges, the Court of Appeals on January 26, 1998 denied Ms. Lambert's petition for rehearing en banc. Ms. Lambert then surrendered on February 4, 1998. On April 23, 1998, she filed a petition for a writ of certiorari, Sup. Ct. Docket No. 97-8812. As of this writing, her petition reposes in the Supreme Court of the United States.

After filing her certiorari petition, Ms. Lambert filed with the Court of Appeals a renewed motion for her release during the pendency of her petition in the Supreme Court. The motions panel, construing Fed. R. App. P. 23(d), held that, “the initial order here, releasing Lambert to the custody of her attorneys, was made by the district court with the consent of the Commonwealth on April 16, 1997", and held that this was the Order that, within the meaning of Rule 23(d), “expressly covers review by the Supreme Court.” See Lambert v. Blackwell, Nos. 97-1281, 97-1283, and 97-1287, slip op. at 5-6 (3d Cir. May 6, 1998). On its own motion, the Court of Appeals on May 12, 1998 referred the

issue of release to the en banc court. In a not-for-publication opinion, the en banc court on August 3, 1998 reversed the motions panel's Order, over five judges' dissents. Id. (3d Cir. Aug. 3, 1998). Four days later, Ms. Lambert filed an application with Justice Souter, in his capacity as Circuit Justice, for release from custody. See U.S. Sup. Ct. Docket No. A98-118 (Aug. 7, 1998). Justice Souter denied the application three days later. See id. (Aug. 10, 1998).

The Court of Appeals's mandate not being stayed, Ms. Lambert commenced proceedings in the Pennsylvania state courts, which ultimately afforded her no relief. Among other things, the Pennsylvania Superior Court held that pursuant to the Pennsylvania Post-Conviction Relief Act, 42 Pa. Cons. Stat. Ann. § 9545(b)(3), and Pa. S. Ct. Rule 13, Ms. Lambert had until September 30, 1997 to file her PCRA petition, but as it was not filed (pursuant to the Court of Appeals panel's mandate) until February 2, 1998, no Pennsylvania court had jurisdiction under the PCRA to entertain Ms. Lambert's petition. See Commonwealth v. Lambert, No. 1378 Harrisburg 1998, slip op. at 10-21 (Dec. 18, 2000). The Superior Court decision on this point followed an earlier ruling of the Pennsylvania Supreme Court, published well after the second Lambert panel's decision in the Court of Appeals, that the time limits of the PCRA are jurisdictional and not subject to any exceptions other than those (inapplicable) ones set forth in the statute. See Commonwealth v. Fahy, 558 Pa. 313, 737 A.2d 214, 222 (1999)(“Jurisdictional time limits go to a

court's right or competency to adjudicate a controversy. These limitations are mandatory and interpreted literally"); see also Lines v. Larkins, 208 F.3d 153, 164-65 n.17 (3d Cir. 2000)("the time restrictions for seeking relief under [the PCRA] are jurisdictional.").

While Ms. Lambert's appeal was pending in the Pennsylvania Superior Court, the Pennsylvania Supreme Court issued Order No. 218, Jud. Admin. Doc. No. 1 (May 9, 2000), which provides in full as follows:

> And now, this 9th day of May, 2000, we hereby recognize that the Superior Court of Pennsylvania reviews criminal as well as civil appeals. Further, review of a final order of the Superior Court is not a matter of right, but of sound judicial discretion, and an appeal to this Court will only be allowed when there are special and important reasons therefor. Pa.R.A.P. 1114. Further, we hereby recognize that criminal and post-conviction relief litigants have petitioned and do routinely petition this Court for allowance of appeal upon the Superior Court's denial of relief in order to exhaust all available state remedies for purposes of federal habeas corpus relief.
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> In recognition of the above, we hereby declare that in all appeals from criminal convictions or post-conviction relief matters, a litigant shall not be required to petition for rehearing or allowance of appeal following an adverse decision by the Superior Court in order to be deemed to have exhausted all available state remedies respecting a claim of error. When a claim has been presented to the Superior Court, or to the Supreme Court of Pennsylvania, and relief has been denied in a final order, the litigant shall be deemed to have exhausted all available state remedies for purposes of federal habeas corpus relief. This Order shall be effective immediately.

Being of the view that Order No. 218 followed the path Justice Souter had illuminated in his concurrence in O'Sullivan v. Boerckel, 526 U.S. 838, 849, 119 S.Ct. 1728, 1734-35 (1999),[2] Ms. Lambert filed her third[3] amended petition for writ of habeas corpus with this Court on January 29, 2001. With that filing, her counsel, noting in a transmittal letter "the somewhat unusual posture of this case," suggested "that a conference might be helpful to discuss how best to proceed."

Thus, at this point in Ms. Lambert's four and a half year habeas odyssey, she has pending (a) her April 23, 1998 certiorari petition, and (b) her January 29, 2001 third amended petition for a writ of habeas corpus. Is it possible that (a) and (b) can both be active at the same time?[4]

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[2] A view our colleague, Judge VanAntwerpen, shares, see Mattis v. Vaughn, C.A. No. 99-6533, slip op. at 16-20 (E.D.Pa. Jan. 17, 2001). Accord: Swoopes v. Sublett, 196 F.3d 1008 (9th Cir. 1999), cert. denied 120 S.Ct. 1996 (2000) (reviewing Arizona Supreme Court decisional rule similar to Pennsylvania Order No. 218).

[3] Ms. Lambert also filed a second amended petition in March of 1999, after the Pennsylvania Superior Court declined to relax its page limit rule to afford Ms. Lambert space to canvass all of the issues she sought to raise. After receiving submissions from the parties in April of 1999, we took no action on the second amended petition in view of the pendency of both the appeal in the Pennsylvania Superior Court and of the petition for a writ of certiorari in the United States Supreme Court.

[4] By Order of January 30, 2001, we solicited, and now have received, the parties' views on this question. Although the procedural context unquestionably now differs from what it was in the spring of 1999, the Commonwealth's February 16, 2001 response to our latest order essentially repeats its 1999 contention that "the district court is powerless to act" as "long as the order of the Court of Appeals is pending in the Untied [sic] States

(continued...)

Although we have found no other habeas case in such a procedural posture, we nevertheless find a good deal of light on this problem in the well-settled prudential rule that, absent the most extraordinary circumstances, only one level of the Article III Branch should act as to the same parties and issues in the same case. See, e.g., Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58, 103 S.Ct. 400, 402 (1982)(per curiam)("A federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously."). There would therefore be much more than "a certain perceived incongruity", as Ms. Lambert's counsel describes it[5], if this Court and the Supreme Court moved on parallel tracks.

It is nevertheless hard to quibble with Ms. Lambert's depiction of "[t]he uniqueness of this case". Pet.'s Mem. at 5, n.2. It is, to be sure, true that every federal judge who has opined about this case has, in one degree or another, come to the conclusion Court of Appeals Judge Greenberg voiced for the majority of the August 3, 1998 en banc court: "we regard the matter as being of exceptional importance", Lambert v. Blackwell, supra, slip op. at 9 (3d Cir. Aug. 3, 1998)(en banc). It could be argued with force that this consensus or "uniqueness" warrants affording exceptional treatment notwithstanding the jurisdiction

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[4](...continued)
Supreme Court". See Response of the Respondents to the District Court Order of Jan. 30, 2001 at first unnumbered page of text.

[5] See Memorandum of Petitioner in Response to Order of Jan. 30, 2001 ("Pet.'s Mem.") at 3.

of the United States Supreme Court over Ms. Lambert's petition for certiorari. We nonetheless believe that these powerful arguments are trumped by the reality that the superior forum involved is the nation's highest court, to which we owe maximal deference. The United States Supreme Court is therefore the only federal court that at this time may properly hear Ms. Lambert's claims.[6]

This conclusion does not leave Ms. Lambert without a forum to hear her arguments that the legal landscape has so radically changed since December 29, 1997 (i.e., "in light of the fact that the state PCRA proceedings are a complete nullity", Pet.'s Mem. at 4) that it warrants the release we ordered on April 16, 1997, confirmed on April 21, 1997, and that five members of the Court of Appeals were prepared to give her on August 3, 1998. It also does not "force[] [her] to abandon her

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[6] Although a theoretical possibility, there is no realistic chance that Ms. Lambert's petition has simply been "lost" in the sea of paper that engulfs the Supreme Court. We know from the Supreme Court's public docket that the petition and the Commonwealth's opposition to it were "distributed" and "redistributed" four times in 1998. In her February 16, 2001 response to our January 30 Order soliciting the parties' views, Ms. Lambert's counsel disclosed that "Christopher W. Vasil, Deputy Clerk of the Supreme Court, has informally requested that the Court be advised of developments in the case." See Pet.'s Mem. at 3, n.1. Pursuant to that request, as recently as January 30, 2001, Ms. Lambert's counsel forwarded copies of her third amended petition and our Order of the same day to the Supreme Court's Deputy Clerk, and on February 16, 2001 sent him a copy of her Memorandum that she filed with us that day.

In a letter faxed to the Court yesterday, Ms. Lambert's counsel reported that the Supreme Court advised her "that the Lambert case has been put on the Court's schedule for the conference this Friday, February 23, 2001." This report only fortifies the conclusion we reach here.

certiorari petition . . . in order to obtain federal relief." Pet.'s Mem. at 3.[7] We are aware, for example, of no impediment under the United States Supreme Court's rules to Ms. Lambert's renewing her application to that Court for her release in view of her apparent compliance with the Court of Appeals's direction and the Pennsylvania courts' conclusion that they have no jurisdiction over her claims of actual innocence and prosecutorial misconduct.[8] In sum, whatever Ms. Lambert may see as her best procedural step in the United States Supreme Court, she must, in our view, first await definitive action from that tribunal before this one may entertain any action on her third amended petition.

We therefore will defer the conference petitioner's counsel has requested until Supreme Court action clarifies our future role, if any.

BY THE COURT:

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Stewart Dalzell, J.

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[7] Such an abandonment would be an odd election in view of the extraordinary time Ms. Lambert's petition has reposed in the Supreme Court, as she herself observes. See Pet.'s Mem. at 3. See also note 6, supra.

[8] Although such renewed applications are "not favored", Sup. Ct. R. 22.4, they are by no means forbidden, and the leading treatise on Supreme Court practice mentions that "[t]he general policy is to refer the renewed application to the full Court for action." Robert L. Stern, et al., Supreme Court Practice § 17.2, p.650 (7th ed. 1993). See also id. § 17.5, pp. 664-65.